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**THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 2479287  
Issued on August 21, 2001

FOUR SEASONS DAIRY, INC.,

Petitioner,

- against -

INTERNATIONAL GOLD STAR  
TRADING CORP.,

Registrant

Index No.:

**PETITION FOR CANCELLATION**

May 29, 2003

05-29-2003

U.S. Patent & TMO/c/TM Mail Rpt Dt. #22

Box: TTAB FEE  
2900 Crystal Drive  
Arlington, VA 22202-3513

**PETITION FOR CANCELLATION**

Petitioner, Four Seasons Dairy, Inc., a corporation organized and existing under, and by virtue of, the laws of the State of New York, located at 2402 65<sup>th</sup> Street, Suite B3, Brooklyn, New York 11204, believes that it is being damaged by Registration No. 2479287 and hereby petitions to cancel same on the following grounds:

1. Upon information and belief, Registrant, International Gold Star Trading Corp., a corporation organized and existing under the laws of the State of Delaware, and doing business at 570 Smith Street, Brooklyn, New York 11231, is the owner of United States Trademark Registration No. 2479287 for "BABUSHKA'S RECIPE" for "dairy products, excluding ice cream, ice milk and frozen yogurt processed and marinated vegetables" in International Class 029. (The said goods are hereinafter

collectively referred to as "Registrant's Goods.")

2. Registrant claims a date of first use of the "BABUSHKA'S RECIPE" mark on September 31, 1999.

3. Petitioner's Trademark is a Russian term in the Cyrillic alphabet БАБУШКИНО that means "granny" and is transliterated as "BABUSHKINO." It is inherently distinctive as used in connection with the goods sold by Petitioner under Petitioner's mark which goods include: vegetable oil spread, vegetable extracts for food, margarine, dairy products excluding ice cream, ice milk and frozen yogurt; butter, cottage cheese and yogurt, all in International Class 29 (hereinafter referred to as "Petitioner's Goods").

4. In addition, Petitioner's Trademark, transliterated as "BABUSHKINO," has been used by Petitioner, including its predecessors, shareholders, officers and directors, in connection with Petitioner's Goods for at least six years - long before Registrant first used its BABUSHKA'S RECIPE mark. As a result of Petitioner's widespread and longstanding use of the Petitioner's Trademark transliterated as "BABUSHKINO" in connection with, Petitioner's Goods, Petitioner's Trademark transliterated as "BABUSHKINO," has acquired greater distinctiveness and extensive goodwill, and is well known and recognized by consumers and the trade as identifying the Products that are affiliated with or have been authorized by Petitioner.

5. Registrant's Goods are closely related to

Petitioner's Goods and, upon information and belief, have been promoted through the same channels of trade. Hence, Registrant's use of the mark BABUSHKA'S RECIPE in connection with Registrant's Goods, is likely to cause confusion, mistake or deception as to the source of origin of Registrant's Goods in that the public, the trade and others are likely to believe that Registrant's Goods are provided by, sponsored by, approved by, licensed by, affiliated with or in some other way legitimately connected to Petitioner.

6. Moreover, the continued existence of Registrant's BABUSHKA'S RECIPE registration casts a cloud upon Petitioner's right to continue to use and to expand the use of its Trademark transliterated as BABUSHKINO.

7. Petitioner has applied to the United States Patent and Trademark Office to register its mark consisting of a Russian term in the Cyrillic alphabet БАБУШКИНО that means "granny" and is transliterated as "BABUSHKINO." The said application has been assigned Serial No. 76/174746. The Examining Attorney has refused registration under Trademark Act Section 2(d) on grounds that the applicant's mark under Serial No. 76/174746 so closely resembles the mark in U.S. Registration No. 2479287 as to be likely to cause confusion, to cause mistake or to deceive.

8. The said application under Serial No. 76/174746 has been deemed abandoned for failure to respond to the Office Action mailed on June 24, 2002.

9. Petitioner herein is concurrently and timely

filing a Petition to Revive under Serial No. 76/174746 and Response to Office Action including a request that the application under Serial No. 76/174746 be placed on suspension pending resolution of the instant cancellation proceeding.

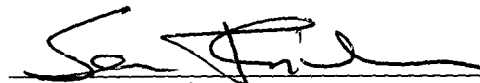
10. Respondent's registration was obtained fraudulently in that, upon information and belief, in the formal application papers filed by Respondent under oath or notice of 18 USC 1001 it was stated in sum or substance that to the best of Respondent's knowledge and belief, no other person, firm, corporation or association had the right to use the mark in commerce in such near resemblance as to be likely to cause confusion, or to cause mistake or to deceive. Said statement was false in that the true facts were that Respondent had actual knowledge that Petitioner was using its trademark transliterated as BABUSHKINO on Petitioner's Goods sold in commerce. Said statement was made by an authorized agent of Respondent with the knowledge and belief that said statement was false. Said false statement was made with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration, and, reasonably relying upon the truth of said false statements, the U.S. Patent and Trademark Office did in fact, grant said registration to Respondent. Petitioner was damaged by said false statements and the registration issued in reliance thereon in that Petitioner, including its predecessors, shareholders, officers and directors, since at least December 1997, has continuously used the mark on Petitioner's Goods and Petitioner's

continued and legal use of said mark will be impaired by the continued registration of said mark of Respondent.

**WHEREFORE,** Petitioner believes that it has been and will be damaged by Registration No. 2479287 and prays that this Petition for Cancellation be sustained in favor of Petitioner, that judgment be entered against Registrant and that U.S. Trademark Registration No. 2479287 be canceled.

Dated: May 29, 2003

Respectfully Submitted,



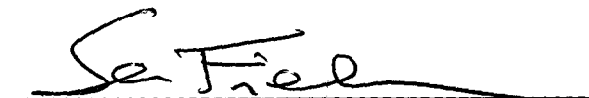
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New York, New York 10007  
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Attorney for Petitioner  
FOUR SEASONS DAIRY, INC.

**CERTIFICATE OF MAILING**

I hereby certify that this Petition to Cancel, including one copy thereof and \$300.00 fee are being deposited, with the United States Postal Service as EXPRESS MAIL Post Office to Addressee, No. ET190757641US, postage prepaid, in an envelope addressed to: TTAB, 2900 Crystal Drive, 9<sup>th</sup> Floor, Arlington, Virginia 22202-3513, on May 29, 2003.

Dated: May 29, 2003

  
Samuel Friedman